

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company (CBT), an independent, mid-size local exchange carrier, files these reply comments in the above-referenced proceeding. CBT did not file comments on August 21, 2001, however, due to the widely divergent views expressed by the parties filing initial comments, CBT feels compelled to file brief reply comments in response to some issues addressed in the comments.

I. INTRODUCTION AND SUMMARY

The views expressed by parties filing comments ranged from those urging the rapid adoption of a bill and keep regime with minimal regulatory involvement for all types of carriers and traffic to those recommending the retention of the existing calling party network pays (CPNP) regime with additional regulatory intervention. In between these two extremes were a myriad of positions on issues related to bill and keep and CPNP.

The one thing that virtually all parties agreed on is that neither the “Central Office Bill and Keep” (COBAK) nor the “Bill Access to Subscribers—Interconnection Cost Split” (BASICS) proposals are workable as proposed. While BASICS might provide a nice theoretical framework for analyzing the economics of an efficient interconnection regime, all parties agreed that in reality, it would be impossible to implement. On the other hand, the COBAK framework,

while not accepted in its entirety by any party, was viewed by many parties as a good starting point for the development of a workable, economically efficient bill and keep regime.

A number of issues surfaced repeatedly throughout the comments. Among those parties willing to entertain the concept of bill and keep, the major issues appeared to be: 1) must it apply to all types of traffic, 2) the impacts on end-user rates and universal service, 3) the degree of regulatory intervention necessary after establishment of a bill and keep regime, and 4) the point of interconnection. Within the discussion of the existing CPNP regime attention was focused primarily on two issues: 1) whether the Commission should prescribe rates based on TELRIC or other variations of forward-looking economic cost; and 2) the point of interconnection.

These are all issues that need to be thoroughly explored by the Commission before it adopts a new intercarrier compensation system or modifies the existing system. CBT believes that the objectives and framework outlined in the United States Telecom Association's (USTA) comments provide a sound foundation for the Commission's continuing analysis and development of a unified intercarrier compensation regime. At this point in the process, CBT is not prepared to endorse or reject a unified bill and keep regime for intercarrier compensation. However, CBT offers the following remarks on several of the major themes raised in the comments.

Regardless of whether the Commission retains a CPNP system or moves to a bill and keep regime, the end result should be a system that is deregulatory in nature, eliminates arbitrage opportunities, and does not impose significant new compliance costs on any parties. If the Commission ultimately decides to maintain the CPNP regime for access charges, it should refrain from implementing new, more cumbersome regulatory processes, such as would be

involved in prescribing TELRIC-based rates, in the hopes that it can somehow duplicate the working of a competitive marketplace.

In comparing the costs and benefits of staying under a CPNP regime versus moving to bill and keep, one factor that should not be discounted is that under the existing system, the arbitrage opportunities are already known and the Commission has set a course to eliminate them. However, if a bill and keep system is adopted, the best way to avoid regulatory arbitrage is to ensure that the new rules apply equally to all types of providers, technologies, and services. Parity must also extend to cost recovery mechanisms.

Finally, the Commission must ensure that end user rates remain affordable under a bill and keep system. The first step in doing so is to remove the implicit subsidies contained in local rate structures and replace them with an explicit universal service plan.

II. REGULATORY INTERVENTION SHOULD BE MINIMIZED

CBT believes that whatever action the FCC takes as a result of this proceeding, the outcome must result in less regulation. Replacing one set of complex regulatory rules with another set of equally complex rules clearly would not be deregulatory, nor would it be economically efficient. Regulation, by its very nature, can never create a system that will operate as efficiently as an unregulated competitive market. To the extent that the Commission determines that regulation is still needed as competition continues to expand throughout the telecommunications marketplace, it should strive to minimize those regulations in order to minimize the efficiency distorting impacts such regulations can engender.

The Commission acknowledges in the introduction of the NPRM its desire to encourage efficient use of the network and to minimize the need for regulatory intervention. The Commission should not be dissuaded from this goal by the comments of several parties,

including AT&T and WorldCom, that advocate increased regulation. Regardless of whether the Commission retains a CPNP system or moves to a bill and keep regime, the end result should be a system that is deregulatory in nature, eliminates arbitrage opportunities, and does not impose significant new compliance costs on any parties.

A. TELRIC Pricing for Access Charges Must be Rejected

AT&T's proposal that the imposition of TELRIC-based pricing within the CPNP regime will eliminate all inefficiencies and arbitrage opportunities that currently exist is unrealistic. It has been well documented through numerous proceedings over the years that TELRIC pricing for access services is economically inefficient. Moreover, even if, contrary to general economic wisdom, the Commission were to rule that TELRIC pricing of access services is economically efficient, it would then be faced with the impossible task of determining the appropriate TELRIC prices for all local exchange carriers. If the protracted state UNE proceedings provide any indication of the process that would ensue under such a system, the process itself would insert additional costs into the system, further undermining any purported efficiencies of TELRIC pricing for access charges. Regardless of what rates emerge from such a process, the one certainty, as expressed by Level 3 in its comments,¹ is that the system would not result in a technologically and competitively neutral compensation system.

If the Commission ultimately decides to maintain the CPNP regime for access charges, the Commission should refrain from implementing new, more cumbersome regulatory processes in the hopes that it can somehow duplicate the working of a competitive marketplace. The

¹ Level 3 at p. 3.

Commission should adhere to its previous decisions² that the marketplace is best able to set efficient rates and continue to minimize its involvement in rate setting for access charges.

B. Minimize Arbitrage Opportunities

As long as regulations exist, there will be opportunities for arbitrage. It is an unavoidable by-product of regulation. If a regulation exists, parties will try to find loopholes that can be exploited. This behavior is not unique to CLECs, in spite of the attention focused on the manner in which they have benefited from the ISP reciprocal compensation scenario. However, the fact that parties act in their own best interest and take advantage of such opportunities does not make arbitrage economically efficient overall, nor should such opportunities be allowed to continue, once identified. The suggestion by many of the CLECs that arbitrage, such as that resulting from the ESP exemption that in turn led to the ISP reciprocal compensation debacle, is beneficial to anyone other than the party that realizes the financial gain is preposterous and should be rejected.³

Bill and Keep

When analyzing the consequences of a bill and keep regime, the Commission must consider the opportunities for arbitrage that will be created under such a system. In the limited examination that has occurred thus far, numerous opportunities for arbitrage have already been identified. As this analysis continues throughout the course of this proceeding modifications will be made to eliminate the identified arbitrage opportunities. However, at some point final rules will be adopted and, as implementation proceeds, parties will undoubtedly discover previously unanticipated loopholes or arbitrage opportunities. The best we can hope for is that at the

² *Access Charge Reform*, CC Docket No. 96-262, *First Report and Order*, FCC 97-158 (rel. May 16, 1997) at ¶263 and *Fifth Report and Order*, FCC 99-206 (rel. August 27, 1999) at ¶¶1-2.

³ See for example, *CompTel* at p. 8.

starting point, no discernable arbitrage opportunities exist and that the Commission stands ready to take swift action to eliminate any arbitrage opportunities as they are identified.

In comparing the costs and benefits of staying under a CPNP regime versus moving to bill and keep, one factor that should not be discounted is that under the existing system, everyone already knows where the arbitrage opportunities are and the Commission has already set a course to eliminate them. After moving to bill and keep, regardless of how well designed the new system appears to be initially, this process will have to begin anew. CBT does not mean to suggest that this factor alone should eliminate bill and keep from being considered. Instead, this is one factor that should be considered when weighing the costs and benefits of a new system.

CPNP

If the Commission determines that it should maintain the existing CPNP system, it should eliminate the ISP reciprocal compensation abuses that arise as a result of the ESP exemption. Although the adoption of the ISP Reciprocal Compensation Order⁴ has mitigated the impact of the arbitrage, the problem has not been eliminated. If at the conclusion of this proceeding, the decision is to retain a CPNP regime, the Commission should eliminate the ISP reciprocal compensation problem completely by repealing the ESP exemption.

III. REGULATORY PARITY IS CRUCIAL TO AN EFFICIENT BILL AND KEEP REGIME

One common theme that weaves its way through many of the comments is the concept of parity or competitive neutrality. Most parties agreed that a system that subjects different types of providers, technologies, and services to different rules will create new arbitrage opportunities that will distort any economic efficiencies that may otherwise result from a bill and keep

structure for intercarrier compensation. As Time Warner avers, “the Commission should be particularly wary of creating new opportunities for regulatory arbitrage (especially those created by the different regulatory treatment of similar services) as it seeks to eliminate old ones.”⁵ Likewise, there is a strong consensus that bill and keep, if enacted, must apply to interstate and intrastate traffic simultaneously.⁶ CBT strongly agrees that such regulatory parity is essential to any new system resulting from this proceeding.

Parity must also extend to cost recovery mechanisms applied to different types of carriers. If some carriers have complete pricing flexibility in setting end-user rates while others are constrained by regulations, the signals sent to end users will be distorted and economic efficiency will be thwarted. The Commission’s involvement in price setting under a bill and keep regime must be minimized. If the Commission merely transfers its current regulatory process from rates charged to carriers to rates charged to end users, as suggested by WorldCom,⁷ the system will not be improved. Instead, significant benefits will accrue to IXC’s which will have their access charges eliminated, while consumers will still not receive the proper pricing signals to make rational economic decisions based on market-based rates. As SBC indicates, “(o)ne of the primary benefits of moving to a bill and keep regime is to avoid the problems caused by regulators setting prices.”⁸ As several other parties substantiate, a system that does not provide for parity between carriers in end user pricing will simply transfer the inefficiencies of the existing intercarrier compensation system to the new system.⁹

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC 01-131, (rel. April 27, 2001).

⁵ Time Warner at pp. 11-12.

⁶ See for example, USTA at p. 26, BellSouth at p. 15, Time Warner at p. 22, Sprint at p. 23, Level 3 at pp. 24-26.

⁷ WorldCom at pp. 13-16 and the attached Declaration of Patrick DeGraba at p. 8.

⁸ SBC at p. 31.

⁹ See, for example, BellSouth at p. 15, Time Warner at p. 11, SBC at pp. 31-32.

IV. UNIVERSAL SERVICE ISSUES MUST BE ADDRESSED BEFORE A UNIFIED COMPENSATION REGIME IS ADOPTED

Almost every party that addressed bill and keep commented on the need to address the impact such a system would have on end user rates and the need for a universal service mechanism to ensure that end user rates remain affordable. While many parties addressed this issue, SBC put forth a more comprehensive proposal for universal service reform, which SBC maintains, must occur prior to implementation of a uniform bill and keep regime.¹⁰ CBT agrees with SBC on this issue. In order for a bill and keep regime to operate in an economically efficient manner, the implicit subsidies must be removed from the local rate structures. If regulators fail to address this problem, competitors will continue primarily to pursue the lucrative business market. The resulting paucity of competition for residential customers will perpetuate the cry for regulation of end user rates, even under bill and keep. Until regulators address the root cause of the problem, simply switching from one regime to another accomplishes very little in the way of economic efficiency and deregulation.

The removal of these implicit subsidies should be accomplished in conjunction with an explicit universal service plan that ensures that services are available at just, reasonable, and affordable rates. As SBC recommended, the affordability standard under the plan should represent an end user's ability to bear the cost of service relative to household income.¹¹ Furthermore, funding of universal service support must be accomplished in a technologically and competitively neutral manner. If funding is derived from an assessment levied on service providers, the assessment must apply equitably to all types of providers, not just those offering traditional telecommunications services.

¹⁰ SBC at pp. 20-24.

¹¹ SBC at p. 23.

V. CONCLUSION

At this stage in the process, very few parties seem prepared to unequivocally endorse or reject a bill and keep regime. It is intriguing to many from a theoretical perspective, but the uncertainty of how such a massive overhaul of the intercarrier compensation system could or would work in reality is an entirely different matter. The many complex issues raised in the comments and the widely varying positions of the parties sends a clear signal that the Commission should proceed slowly and cautiously in its consideration of a unified bill and keep intercarrier compensation regime.

Respectfully submitted,

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